

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BARON WOLMAN,

Plaintiff,

- against -

SAN ANTONIO CURRENT CO.

Defendant.

Docket No. 5:19-cv-00339

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Baron Wolman (“Wolman” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant San Antonio Current Co. (“San Antonio” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph musician and songwriter Doug Sahm, owned and registered by Wolman, a professional photographer. Accordingly, Wolman seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Upon information and belief, this Court has personal jurisdiction over Defendant because Defendant resides and/or transacts business in Texas and is registered with the Texas Department of State Division of Corporations.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Wolman is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 52 Vereda Serena Road, Santa Fe, New Mexico 87508.

6. Upon information and belief, San Antonio is a domestic business corporation organized and existing under the laws of the State of Texas, with a place of business at 915 Dallas Street, San Antonio, Texas 78215. Upon information and belief, San Antonio is registered with the Texas State Department of Corporations to do business in Texas. At all times material hereto, San Antonio has owned and operated a website at the URL: www.Sacurrent.com (the “Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

7. Wolman photographed musician and songwriter Doug Sahm (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Wolman is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with United States Copyright Office and was given Copyright Registration Number VA 2-114-914.

B. Defendant’s Infringing Activities

10. San Antonio ran an article on the Website entitled *Groove on This: Tex-Pop to Host Doug Sahm Day*. See: <https://www.sacurrent.com/sanantonio/blogs/Post?url=http://www.sacurrent.com/Blogs/archives/2015/10/28/groove-on-this-tex-pop-to-host-doug-sahm-day>. The article featured the Photograph. A screenshot of the Photograph on the Website is attached hereto as Exhibit B.

11. San Antonio did not license the Photograph from Plaintiff for its article, nor did San Antonio have Plaintiff's permission or consent to publish the Photograph on its Website.

12. Wolman first learned of the use of the Photograph on Defendant's Website in April 2017.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. San Antonio infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. San Antonio is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by San Antonio have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST
DEFENDANT
(17 U.S.C. § 1202)

18. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-17 above.

19. Upon information and belief, intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photograph.

20. The conduct of San Antonio violates 17 U.S.C. § 1202(b).

21. Upon information and belief, San Antonio's falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

22. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by San Antonio intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph. San Antonio also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph.

23. As a result of the wrongful conduct of San Antonio as alleged herein, Plaintiff is entitled to recover from San Antonio the damages, that he sustained and will sustain, and any

gains, profits and advantages obtained by San Antonio because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

24. Alternatively, Plaintiff may elect to recover from San Antonio statutory damages pursuant to 17 U.S.C. § 1203(c) (3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant San Antonio be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant San Antonio be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
 - a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);
5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;

6. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 1203(b);
7. That Plaintiff be awarded punitive damages for copyright infringement;
8. That Plaintiff be awarded costs, expenses, and attorney's fees;
9. That Plaintiff be awarded pre-judgment interest; and
10. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
April 2, 2019

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